

A reasonable system of accountability

The federal government has a legitimate interest in making sure that a state meets its obligations under the federal Clean Water Act, including achievement of reductions from sources of pollution that are not federally regulated. Moreover, the federal government must reflect that legitimate interest via concomitant federal commitment in the Appropriations and Budget Acts to fund efforts to clean up the Bay. If a state fails to achieve sufficient performance under their watershed implementation plan, consequences may be imposed. However, EPA should be allowed to exercise discretion in the types and level of consequences that may be applied, provided that the focus of the consequences is on the sectors not meeting their reductions. The federal government must ensure that states be given a reasonable amount of time to correct identified problems, based on consultation with the states and in reference to state-level strategic plans to clean up the Bay prior to an EPA finding of non-performance.

Pollution allocations based on science and principles of equity

The Chesapeake Bay is the most studied and data-rich estuary in the world. Pollution loads allocated to basin jurisdictions should be based upon the relative effectiveness of reductions from various regions of the watershed, the cost-effectiveness of those reductions, and general principles of equity.

Inclusion of *all* sources when accounting for pollution loads

The level of nitrogen, phosphorus, and sediment reductions needed to achieve water quality standards for Chesapeake Bay will require accounting for all sources of nutrient and sediment pollution. However, states should

determine how and from which sources they will achieve their reductions to meet their overall allocation load. Reductions will not be required from each and every source, as long as loads are achieved from all sources as a whole.

Allowances and accounting for growth

In order to comply with the TMDL, pollutant loads must not only be reduced to meet the cap, they must be maintained at that level over time, even in the face of population growth. New or expanding sources must be provided for under the TMDL, through offsets, trading or other methods.

Improved tracking and credit for “voluntary” agricultural best management practices

USDA and states have made considerable investments to improve conservation on farms by providing cost-share assistance for best management practices. These efforts are multiplied well beyond the cost-share programs by fostering new knowledge and improved management across agriculture. Unfortunately, only publicly-funded practices are tracked and accounted for in the Chesapeake Bay watershed model. In order for farmers to get full credit for their conservation work, practices implemented without public dollars must also be counted.

USDA should take a lead role as a federal partner in this effort, assisting the EPA and the states as they look for cost-effective methods to count and report these practices and assisting the Chesapeake Bay Program as they develop standards to accurately credit reported information. Approaches involving technical assistance providers and vendors to improve the quality and accuracy of the data should be explored.

In this effort, state and federal partners should seek to protect the confidentiality of

individual farm information except as necessary to verify the accuracy of reported information.

A “safe harbor” for farmers in compliance

State Watershed Implementation Plans will lay out a 15-year plan to achieve water quality goals and provide predictability to regulated entities. If a farmer is meeting all of the regulatory requirements within an approved state plan, then that farmer should be shielded from additional federal enforcement.

Technical assistance for farmers and local governments

In order to achieve the accelerated level of nutrient and sediment reductions required by the 2025 deadline, we will have to engage even greater numbers of farmers and other landowners in higher levels of conservation. To do this, increased levels of technical assistance is critical at the state and conservation district level.

Likewise, a TMDL cap will require us to address stormwater runoff and other effects of land use conversion. Unlike other major sources of nutrient and sediment pollution that have been decreasing over time, loadings from urban and suburban lands are increasing. Because local governments have jurisdiction over land use decisions, there is a great need for technical assistance to local governments as they plan for the future and learn how to implement pollution reduction practices.

An expanding market for nutrient trading

Trading can be an important tool to achieve reductions more cost-effectively and more quickly than would otherwise be possible when there is a market of available credits to enable that trading. While states have begun their own intrastate programs, the market for credits

could potentially improve if it was expanded across state lines. However, any interstate program should not undermine or preclude existing intrastate programs.

Similarly, the supply of credits could possibly be expanded by bringing to market new technologies, such as alternative manure technologies, with the potential to achieve large amounts of reductions beyond traditional best management practices. The diversity and pace of emerging technology is beginning to challenge the resources of government agencies with limited technical expertise. Therefore, federal support for a system of expert scientific review would provide credibility and timeliness to credits generated through new technology. Moreover, the use of public-private joint ventures centered on land grant and public universities could be very helpful to this end and should be funded by the federal government.

Notes

1. The District of Columbia will be subject to the same requirements under a Chesapeake Bay TMDL as the six states in the watershed. However, this document is specific to the member states of the Chesapeake Bay Commission, which are Pennsylvania, Maryland, and Virginia.
2. Deadline based on implementation of practices that, according to the Chesapeake Bay watershed model, will be sufficient to achieve water quality. Monitored water quality results may lag behind implementation due to delayed response inherent in natural systems.
3. Maryland has committed to a deadline of 2020 for its state goals.
4. A basin-jurisdiction load applies to the portion of a major Bay tributary that lies within a particular state or the District of Columbia. For instance, the “Susquehanna-New York” is one basin-jurisdiction, and the “Susquehanna-Pennsylvania” is another.

ABOUT THE COMMISSION

The Chesapeake Bay Commission is a policy leader in the restoration of the Chesapeake Bay. As a tri-state legislative body representing Maryland, Pennsylvania and Virginia, its mission is to identify critical environmental needs, evaluate public concerns and ensure state and federal actions to sustain the living resources of the Chesapeake Bay. The Commission’s 21 members work directly with their colleagues in the General Assemblies and the U.S. Congress and serve as the legislative branch of the Chesapeake Bay Program.

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CHESAPEAKE BAY COMMISSION
Policy for the Bay



SUMMARY

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The Chesapeake Bay TMDL
Principles for an Effective
Federal-State Partnership

MAY 2010

THE CHESAPEAKE BAY BASIN WILL BE SUBJECT TO THE largest and most complex Total Maximum Daily Load (TMDL)¹ in the nation. Designed to restore the Bay to clean water, it will require regulatory, budgetary and legislative initiatives at the federal, state and local level along with efforts of the private sector. The Chesapeake Bay Commission, through its multi-state collaborative process, presents these ten principles to provide the foundation for any policy actions taken. Collectively, they provide the basis for success.

An implementation² deadline of 2025 with incremental two-year milestones

Bay states and EPA are committed to a 2025³ deadline, with incremental two-year milestones to guide and measure progress. New information and technology should be incorporated over time. Additionally, the milestones will be structured so that implementation sufficient to achieve 60 percent of the progress toward water quality will occur by 2017.

State-led implementation plans

EPA will provide “basin-jurisdiction”⁴ allocation loads for nitrogen, phosphorus, and sediment to each of the Bay states. The states are developing plans to achieve these loads taking into consideration their budget challenges, state and local economies, land use, and the need to provide support for rational growth and infrastructure. There is no one-size-fits all plan that will work for an area as diverse and dynamic as the 64,000-square-mile Chesapeake watershed.

Similar to State Implementation Plans under the Clean Air Act, a system of state-led “Watershed Implementation Plans” will ensure that local realities form the basis of progress while maintaining the necessary level of accountability.

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